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Folder Title: 08/21/2002 [H.R. 309] [771394]

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Barcode Scanning Sheet

Collection Code:	**SECLOG**
Staff Name:	
Document Date:	
Correspondent:	**TIM SAUNDERS**
Subject/Description:	**OVERSIZE ATTACHMENT # 9467 NARA # 9358 BOX 3 FOLDER 6C BILL FILES RECEIVED FROM THE OFFICE OF THE EXECUTIVE CLERK - AUG 21 02 ENROLLED BILL H.R. 309 - GUAM FOREIGN INVESTMENT EQUITY ACT**

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

'02 AUG 15 PM9:56

APPROVED

AUG 2 1 2002

THE DIRECTOR

August 15, 2002

08.21.02
THE PRESIDENT HAS SEEN

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 309 - Guam Foreign Investment Equity Act
Sponsor - Del. Underwood (D) Guam

Last Day for Action

August 24, 2002 - Saturday

Purpose

Requires the government of Guam to tax foreign investors at the same reduced Federal income tax rates which they are subject to in the 50 States under tax treaties between the United States and foreign nations.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Department of the Treasury	Approval
Department of Justice	No objection (Informally)
Department of State	No objection (Informally)
Department of Labor	No comment (Informally)

Discussion

Guam is an unincorporated territory of the United States, and its residents are citizens of the United States. Guam is governed by an organic act approved by Congress. The Organic Act of Guam applies the income tax laws in force in the United States to Guam in the form of a Guam territorial income tax. The Federal Internal Revenue Code generally levies a tax on non-resident aliens in the amount of 30 percent of the gross amount of interest, dividend, rent, royalty and other periodic income derived from their investments in the United States. Since the Guam territorial income tax is required to mirror the Federal Internal Revenue Code, Guam taxes foreign investors at the 30 percent rate.

The United States has entered into bilateral tax treaties with over 60 nations which lower the tax rate for investors from any nation that has entered into such a treaty. According to the report of the Senate Energy and Natural Resources Committee on H.R. 309, the treaties typically lower the tax rate from 30 percent to between 5 and 15 percent. However, Guam is not considered part of the United States for purposes of any of those treaties, and, as a result, the income on foreign investment continues to be taxed at the 30 percent rate in Guam.

H.R. 309 would lower the tax rate on foreign investment in Guam by amending the Organic Act of Guam to require the government of Guam to apply to the earnings of foreign (i.e. non-U.S. and non-Guamanian) investors the tax rates that would apply "were Guam treated as part of the United States for purposes of the treaty obligations of the United States," i.e., the same rates as those applied for Federal income tax purposes in the 50 States under U.S. tax treaties with foreign countries.

The enrolled bill would prohibit Guam from applying the lower treaty tax rates to foreign investors that invest in Guam entities that have received tax rebates in any given taxable year under Guam law. The Department of the Treasury advises that this provision "prevents the inappropriate use of Guam entities to avoid taxation."

Conclusions and Recommendations

The Department of the Interior recommends approval of H.R. 309. In its views letter, the Department notes that the current disparity between tax rates imposed by Guam and the United States on foreign investments "has proven to be a disincentive for investment in Guam by foreign investors." The Department states that "H.R. 309 would level the playing field for Guam, and bolster its economy."

We join the Departments of the Interior and the Treasury in recommending approval of H.R. 309, which passed the House by voice vote and the Senate by unanimous consent.

M E Daniels Jr

Mitchell E. Daniels, Jr.
Director

Enclosures

One Hundred Seventh Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Wednesday, the twenty-third day of January, two thousand and two

THE WHITE HOUSE

An Act

To provide for the determination of withholding tax rates under the Guam income tax.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Guam Foreign Investment Equity Act".

SEC. 2. AMENDMENT TO THE ORGANIC ACT OF GUAM.

(a) IN GENERAL.—Subsection (d) of section 31 of the Organic Act of Guam (48 U.S.C. 1421i) is amended by adding at the end the following new paragraph:

"(3) In applying as the Guam Territorial income tax the income-tax laws in force in Guam pursuant to subsection (a) of this section, the rate of tax under sections 871, 881, 884, 1441, 1442, 1443, 1445, and 1446 of the Internal Revenue Code of 1986 on any item of income from sources within Guam shall be the same as the rate which would apply with respect to such item were Guam treated as part of the United States for purposes of the treaty obligations of the United States. The preceding sentence shall not apply to determine the rate of tax on any item of income received from a Guam payor if, for any taxable year, the taxes of the Guam payor were rebated under Guam law. For purposes of this subsection, the term 'Guam payor' means the person from whom the item of income would be deemed to be received for purposes of claiming treaty benefits were Guam treated as part of the United States.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to amounts paid after the date of the enactment of the Act.

Speaker of the House of Representatives. pro tempore

~~*Vice President of the United States and*~~
President of the Senate. pro tempore

APPROVED
AUG 2 1 2002

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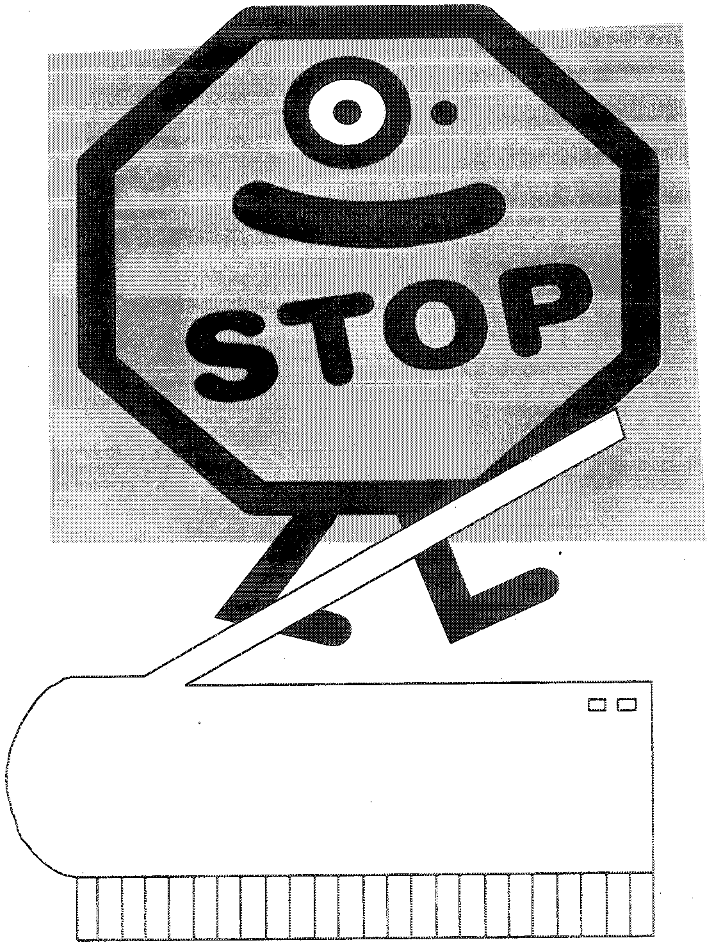
Scanning insert sheet



Remainder of case not scanned

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

U.S. Department of the Interior 1849-1999

AUG 0 8 2002

Honorable Mitchell E. Daniels, Jr.
Director, Office of Management and Budget
Attention: Assistant Director for Legislative Reference
Washington, DC 20503

Dear Mr. Daniels:

This letter responds to your request for the views of the Department of the Interior with respect to enrolled bill H.R. 309, the Guam Foreign Investment Equity Act.

We recommend that the President approve the enrolled bill.

Foreign investors who do not reside in Guam contribute significantly to the economy of Guam. Currently, however, United States tax law requires that foreign investors in Guam who do not reside in Guam, must pay taxes of thirty percent on the gross amount of interest, dividend, rent, royalty and other periodic income derived from investments in Guam. In the fifty states, foreign investors in similar circumstances pay taxes, but the rate of tax is often significantly less under one of the over sixty tax treaties to which the United States is a party. This disparity in tax rates has proven to be a disincentive for investment in Guam by foreign investors. Under the bill, foreign investor income would be subject to tax at the rate that would apply were Guam covered by United States tax treaties. H.R. 309 would level the playing field for Guam, and bolster its economy.

The Administration has supported the enactment of H.R. 309 in testimony of this Department before Congress on July 27, 2001.

We continue to support H.R. 309 and we recommend that the bill be signed.

Sincerely,

P. Lynn Scarlett
Assistant Secretary for Policy,
Management and Budget

DEPARTMENT OF THE TREASURY
WASHINGTON

ASSISTANT SECRETARY

August 6, 2002

The Honorable Mitchell E. Daniels, Jr.
Director, Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Daniels:

This responds to your request for the views of this Department on enrolled bill H.R. 309, the "Guam Foreign Investment Equity Act," that provides for the determination of withholding tax rates under the Guam income tax.

Guam is an unincorporated U.S. territory. However, for most purposes of the Federal income tax laws, including income tax treaties, Guam is treated as a foreign country rather than as part of the United States. Thus, Guam corporations and other Guam entities, as well as investors in those entities, are subject to Federal income tax only in the same circumstances that foreign entities (*e.g.*, Brazilian or Malaysian entities) and their investors are subject to Federal income tax.

The tax law of Guam (which is termed the "Guam territorial income tax") currently in effect is the Internal Revenue Code (IRC) with all references to the "United States" changed to "Guam." Thus, non-resident foreign persons pay tax to Guam on interest, dividends, rents and royalties from sources within Guam at a rate of 30 percent, just as foreign persons not resident in the United States pay a 30 percent tax to the United States on such income from sources within the United States.

U.S. tax treaties lower the rate of U.S. tax on interest, dividends, rents and royalties from sources within the United States paid to residents of our treaty partners. Because Guam is not treated as part of the United States, those treaties do not lower the rate of Guam tax on foreign investment. Moreover, Guam cannot itself lower its tax rates, by treaty or otherwise, because the Organic Act of Guam requires that Guam apply the rates specified in the IRC.

H.R. 309 would amend the Organic Act of Guam to provide that the rate of Guam tax on foreign investment will match the rate that would apply were Guam considered part of the United States for purposes of our income tax treaties. H.R. 309 therefore lowers the rate of Guam taxes on foreign investment in Guam. H.R. 309 also contains a provision that would maintain the current rate of Guam tax in any instance in which the Guam payor of the interest, dividend, rent or royalty had its taxes rebated by Guam. That provision prevents the inappropriate use of Guam entities to avoid taxation.

In view of the foregoing, the Department of the Treasury supports the enrolled bill and recommends that the President sign it into law.

Sincerely,

John Duncan
Assistant Secretary (Legislative Affairs)

Bills Received at the White House

Date received and notification to OMB: **8/13/2002**

Last day for action: **8/24/2002**

	Official Title	
H.R.309	An Act to provide for the determination of withholding tax rates under the Guam income tax.	518664

SS/ RM NO. 518664

WHITE HOUSE STAFFING MEMORANDUM

Date: 8-15-02, 11:00 PM   ACTION / CONCURRENCE / COMMENT DUE BY: 8-16-02, 5:00 PM

Subject: ENROLLED BILL H.R. 309, GUAM FOREIGN INVESTMENT EQUITY ACT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☐	☐
CARD ok	☑	☐	IRASTORZA	☐	☐
BARTLETT ✓	☑	☐	JOHNSON	☐	☐
BLAKEMAN	☐	☐	LINDSEY	☐	☐
BOLTEN N/C	☑	☐	MARBURGER	☐	☐
BRIDGELAND	☐	☐	MIERS	☐	☑
CALIO ok	☑	☐	RICE	☐	☐
CONNAUGHTON ok	☑	☐	RIDGE	☐	☐
DANIELS	☐	☑	ROVE N/C	☑	☐
FLEISCHER	☐	☐	SPELLINGS ok	☑	☐
GERSON	☐	☐	CLERK	☐	☑
GONZALES N/C	☑	☐	______	☐	☐
HAGIN	☐	☐	______	☐	☐
HAWKINS	☐	☐	______	☐	☐

REMARKS:

PLEASE SEND COMMENTS TO JOHN BURNIM, EXT. 57302, FAX 55691, NO LATER THAN 5:00 PM FRIDAY, 8-16-02, WITH COPY TO STAFF SECRETARY. THANK YOU.

RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

'02 AUG 15 PM5:57

THE DIRECTOR

August 15, 2002

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 309 - Guam Foreign Investment Equity Act
Sponsor - Del. Underwood (D) Guam

Last Day for Action

August 24, 2002 - Saturday

Purpose

Requires the government of Guam to tax foreign investors at the same reduced Federal income tax rates which they are subject to in the 50 States under tax treaties between the United States and foreign nations.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Department of the Treasury	Approval
Department of Justice	No objection (Informally)
Department of State	No objection (Informally)
Department of Labor	No comment (Informally)

Discussion

Guam is an unincorporated territory of the United States, and its residents are citizens of the United States. Guam is governed by an organic act approved by Congress. The Organic Act of Guam applies the income tax laws in force in the United States to Guam in the form of a Guam territorial income tax. The Federal Internal Revenue Code generally levies a tax on non-resident aliens in the amount of 30 percent of the gross amount of interest, dividend, rent, royalty and other periodic income derived from their investments in the United States. Since the Guam territorial income tax is required to mirror the Federal Internal Revenue Code, Guam taxes foreign investors at the 30 percent rate.

The United States has entered into bilateral tax treaties with over 60 nations which lower the tax rate for investors from any nation that has entered into such a treaty. According to the report of the Senate Energy and Natural Resources Committee on H.R. 309, the treaties typically lower the tax rate from 30 percent to between 5 and 15 percent. However, Guam is not considered part of the United States for purposes of any of those treaties, and, as a result, the income on foreign investment continues to be taxed at the 30 percent rate in Guam.

H.R. 309 would lower the tax rate on foreign investment in Guam by amending the Organic Act of Guam to require the government of Guam to apply to the earnings of foreign (i.e. non-U.S. and non-Guamanian) investors the tax rates that would apply "were Guam treated as part of the United States for purposes of the treaty obligations of the United States," i.e., the same rates as those applied for Federal income tax purposes in the 50 States under U.S. tax treaties with foreign countries.

The enrolled bill would prohibit Guam from applying the lower treaty tax rates to foreign investors that invest in Guam entities that have received tax rebates in any given taxable year under Guam law. The Department of the Treasury advises that this provision "prevents the inappropriate use of Guam entities to avoid taxation."

<u>Conclusions and Recommendations</u>

The Department of the Interior recommends approval of H.R. 309. In its views letter, the Department notes that the current disparity between tax rates imposed by Guam and the United States on foreign investments "has proven to be a disincentive for investment in Guam by foreign investors." The Department states that "H.R. 309 would level the playing field for Guam, and bolster its economy."

We join the Departments of the Interior and the Treasury in recommending approval of H.R. 309, which passed the House by voice vote and the Senate by unanimous consent.

M E Daniels Jr

Mitchell E. Daniels, Jr.
Director

Enclosures

518664

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

August 15, 2002

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Enclosures

SS/ RM NO. 518664

WHITE HOUSE STAFFING MEMORANDUM

Date: 8-15-02, 11:00 PM ACTION / CONCURRENCE / COMMENT DUE BY: 8-16-02, 5:00 PM

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	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☐	☐
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BARTLETT	☑	☐	JOHNSON	☐	☐
BLAKEMAN	☐	☐	LINDSEY	☐	☐
BOLTEN	☑	☐	MARBURGER	☐	☐
BRIDGELAND	☐	☐	MIERS	☐	☑
CALIO	☑	☐	RICE	☐	☐
CONNAUGHTON	☑	☐	RIDGE	☐	☐
DANIELS	☐	☑	ROVE	☑	☐
FLEISCHER	☐	☐	SPELLINGS	☑	☐
GERSON	☐	☐	CLERK	☐	☑
GONZALES	☑	☐	______________	☐	☐
HAGIN	☐	☐	______________	☐	☐
HAWKINS	☐	☐	______________	☐	☐

REMARKS:

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RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

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OFFICE OF MANAGEMENT AND BUDGET
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SS/ RM NO. 518664

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BLAKEMAN	☐	☐	LINDSEY	☐	☐
BOLTEN	☑	☐	MARBURGER	☐	☐
BRIDGELAND	☐	☐	MIERS	☐	☑
CALIO	☑	☐	RICE	☐	☐
CONNAUGHTON	☑	☐	RIDGE	☐	☐
DANIELS	☐	☑	ROVE	☑	☐
FLEISCHER	☐	☐	SPELLINGS	☑	☐
GERSON	☐	☐	CLERK	☐	☑
GONZALES	☑	☐	______	☐	☐
HAGIN	☐	☐	______	☐	☐
HAWKINS	☐	☐	______	☐	☐

REMARKS:
PLEASE SEND COMMENTS TO JOHN BURNIM, EXT. 57302, FAX 55691, NO LATER THAN 5:00 PM FRIDAY, 8-16-02, WITH COPY TO STAFF SECRETARY. THANK YOU.

RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

August 15, 2002

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 309 - Guam Foreign Investment Equity Act
Sponsor - Del. Underwood (D) Guam

Last Day for Action

August 24, 2002 - Saturday

Purpose

Requires the government of Guam to tax foreign investors at the same reduced Federal income tax rates which they are subject to in the 50 States under tax treaties between the United States and foreign nations.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Department of the Treasury	Approval
Department of Justice	No objection (Informally)
Department of State	No objection (Informally)
Department of Labor	No comment (Informally)

Discussion

Guam is an unincorporated territory of the United States, and its residents are citizens of the United States. Guam is governed by an organic act approved by Congress. The Organic Act of Guam applies the income tax laws in force in the United States to Guam in the form of a Guam territorial income tax. The Federal Internal Revenue Code generally levies a tax on non-resident aliens in the amount of 30 percent of the gross amount of interest, dividend, rent, royalty and other periodic income derived from their investments in the United States. Since the Guam territorial income tax is required to mirror the Federal Internal Revenue Code, Guam taxes foreign investors at the 30 percent rate.

The United States has entered into bilateral tax treaties with over 60 nations which lower the tax rate for investors from any nation that has entered into such a treaty. According to the report of the Senate Energy and Natural Resources Committee on H.R. 309, the treaties typically lower the tax rate from 30 percent to between 5 and 15 percent. However, Guam is not considered part of the United States for purposes of any of those treaties, and, as a result, the income on foreign investment continues to be taxed at the 30 percent rate in Guam.

H.R. 309 would lower the tax rate on foreign investment in Guam by amending the Organic Act of Guam to require the government of Guam to apply to the earnings of foreign (i.e. non-U.S. and non-Guamanian) investors the tax rates that would apply "were Guam treated as part of the United States for purposes of the treaty obligations of the United States," i.e., the same rates as those applied for Federal income tax purposes in the 50 States under U.S. tax treaties with foreign countries.

The enrolled bill would prohibit Guam from applying the lower treaty tax rates to foreign investors that invest in Guam entities that have received tax rebates in any given taxable year under Guam law. The Department of the Treasury advises that this provision "prevents the inappropriate use of Guam entities to avoid taxation."

Conclusions and Recommendations

The Department of the Interior recommends approval of H.R. 309. In its views letter, the Department notes that the current disparity between tax rates imposed by Guam and the United States on foreign investments "has proven to be a disincentive for investment in Guam by foreign investors." The Department states that "H.R. 309 would level the playing field for Guam, and bolster its economy."

We join the Departments of the Interior and the Treasury in recommending approval of H.R. 309, which passed the House by voice vote and the Senate by unanimous consent.

M E Daniels

Mitchell E. Daniels, Jr.
Director

Enclosures

SS/ RM NO. 518664

WHITE HOUSE STAFFING MEMORANDUM

Date: 8-15-02, 11:00 PM ACTION / CONCURRENCE / COMMENT DUE BY: 8-16-02, 5:00 PM

02 AUG 16 AM 9:45

Subject: ENROLLED BILL H.R. 309, GUAM FOREIGN INVESTMENT EQUITY ACT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☐	☐
CARD	☑	☐	IRASTORZA	☐	☐
BARTLETT	☑	☐	JOHNSON	☐	☐
BLAKEMAN	☐	☐	LINDSEY	☐	☐
BOLTEN	☑	☐	MARBURGER	☐	☐
BRIDGELAND	☐	☐	MIERS	☐	☑
CALIO	☑	☐	RICE	☐	☐
CONNAUGHTON	☑	☐	RIDGE	☐	☐
DANIELS	☐	☑	ROVE →	☑	☐
FLEISCHER	☐	☐	SPELLINGS	☑	☐
GERSON	☐	☐	CLERK	☐	☑
GONZALES	☑	☐	______	☐	☐
HAGIN	☐	☐	______	☐	☐
HAWKINS	☐	☐	______	☐	☐

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NO COMMENT

RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

11

SS/ RM NO. 518664 BRETT

WHITE HOUSE STAFFING MEMORANDUM

Date: 8-15-02, 11:00 PM ACTION / CONCURRENCE / COMMENT DUE BY: 8-16-02, 5:00 PM

Subject: ENROLLED BILL H.R. 309, GUAM FOREIGN INVESTMENT EQUITY ACT '02 AUG 16 AM9:44

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☐	☐
CARD	☑	☐	IRASTORZA	☐	☐
BARTLETT	☑	☐	JOHNSON	☐	☐
BLAKEMAN	☐	☐	LINDSEY	☐	☐
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HAGIN	☐	☐	____________	☐	☐
HAWKINS	☐	☐	____________	☐	☐

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No comments

RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

SS/ RM NO. 518664

WHITE HOUSE STAFFING MEMORANDUM

Date: 8-15-02, 11:00 PM ACTION / CONCURRENCE / COMMENT DUE BY: 8-16-02, 5:00 PM

Subject: ENROLLED BILL H.R. 309, GUAM FOREIGN INVESTMENT EQUITY ACT

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RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

August 15, 2002

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 309 - Guam Foreign Investment Equity Act
Sponsor - Del. Underwood (D) Guam

Last Day for Action

August 24, 2002 - Saturday

Purpose

Requires the government of Guam to tax foreign investors at the same reduced Federal income tax rates which they are subject to in the 50 States under tax treaties between the United States and foreign nations.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Department of the Treasury	Approval
Department of Justice	No objection (Informally)
Department of State	No objection (Informally)
Department of Labor	No comment (Informally)

Discussion

Guam is an unincorporated territory of the United States, and its residents are citizens of the United States. Guam is governed by an organic act approved by Congress. The Organic Act of Guam applies the income tax laws in force in the United States to Guam in the form of a Guam territorial income tax. The Federal Internal Revenue Code generally levies a tax on non-resident aliens in the amount of 30 percent of the gross amount of interest, dividend, rent, royalty and other periodic income derived from their investments in the United States. Since the Guam territorial income tax is required to mirror the Federal Internal Revenue Code, Guam taxes foreign investors at the 30 percent rate.

The United States has entered into bilateral tax treaties with over 60 nations which lower the tax rate for investors from any nation that has entered into such a treaty. According to the report of the Senate Energy and Natural Resources Committee on H.R. 309, the treaties typically lower the tax rate from 30 percent to between 5 and 15 percent. However, Guam is not considered part of the United States for purposes of any of those treaties, and, as a result, the income on foreign investment continues to be taxed at the 30 percent rate in Guam.

H.R. 309 would lower the tax rate on foreign investment in Guam by amending the Organic Act of Guam to require the government of Guam to apply to the earnings of foreign (i.e. non-U.S. and non-Guamanian) investors the tax rates that would apply "were Guam treated as part of the United States for purposes of the treaty obligations of the United States," i.e., the same rates as those applied for Federal income tax purposes in the 50 States under U.S. tax treaties with foreign countries.

The enrolled bill would prohibit Guam from applying the lower treaty tax rates to foreign investors that invest in Guam entities that have received tax rebates in any given taxable year under Guam law. The Department of the Treasury advises that this provision "prevents the inappropriate use of Guam entities to avoid taxation."

Conclusions and Recommendations

The Department of the Interior recommends approval of H.R. 309. In its views letter, the Department notes that the current disparity between tax rates imposed by Guam and the United States on foreign investments "has proven to be a disincentive for investment in Guam by foreign investors." The Department states that "H.R. 309 would level the playing field for Guam, and bolster its economy."

We join the Departments of the Interior and the Treasury in recommending approval of H.R. 309, which passed the House by voice vote and the Senate by unanimous consent.

M E Daniels Jr

Mitchell E. Daniels, Jr.
Director

Enclosures

SS/ RM NO. 518664

WHITE HOUSE STAFFING MEMORANDUM

'02 AUG 16 PM3:16

Date: 8-15-02, 11:00 PM ACTION / CONCURRENCE / COMMENT DUE BY: 8-16-02, 5:00 PM

Subject: ENROLLED BILL H.R. 309, GUAM FOREIGN INVESTMENT EQUITY ACT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☐	☐
CARD	☑	☐	IRASTORZA	☐	☐
BARTLETT	☑	☐	JOHNSON	☐	☐
BLAKEMAN	☐	☐	LINDSEY	☐	☐
BOLTEN	☑	☐	MARBURGER	☐	☐
BRIDGELAND	☐	☐	MIERS	☐	☑
CALIO	☑	☐	RICE	☐	☐
CONNAUGHTON	☑	☐	RIDGE	☐	☐
DANIELS	☐	☑	ROVE	☑	☐
FLEISCHER	☐	☐	SPELLINGS	☑	☐
GERSON	☐	☐	CLERK	☐	☑
GONZALES	☑	☐	________	☐	☐
HAGIN	☐	☐	________	☐	☐
HAWKINS	☐	☐	________	☐	☐

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RESPONSE:

to HM 8/16 1:35pm

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

August 15, 2002

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 309 - Guam Foreign Investment Equity Act
Sponsor - Del. Underwood (D) Guam

Last Day for Action

August 24, 2002 - Saturday

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<u>Conclusions and Recommendations</u>

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M E Daniels Jr

Mitchell E. Daniels, Jr.
Director

Enclosures

SS/ RM NO. 518664

WHITE HOUSE STAFFING MEMORANDUM

Date: 8-15-02, 11:00 PM ACTION / CONCURRENCE / COMMENT DUE BY: 8-16-02, 5:00 PM

'02 AUG 16 PM3:09

Subject: ENROLLED BILL H.R. 309, GUAM FOREIGN INVESTMENT EQUITY ACT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☐	☐
CARD	☑	☐	IRASTORZA	☐	☐
BARTLETT	☑	☐	JOHNSON	☐	☐
BLAKEMAN	☐	☐	LINDSEY	☐	☐
BOLTEN	☑	☐	MARBURGER	☐	☐
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HAWKINS	☐	☐	______	☐	☐

REMARKS:
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LEQ ok.

RESPONSE: per DRA

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

One Hundred Seventh Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Wednesday, the twenty-third day of January, two thousand and two

An Act

To provide for the determination of withholding tax rates under the Guam income tax.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Guam Foreign Investment Equity Act".

SEC. 2. AMENDMENT TO THE ORGANIC ACT OF GUAM.

(a) IN GENERAL.—Subsection (d) of section 31 of the Organic Act of Guam (48 U.S.C. 1421i) is amended by adding at the end the following new paragraph:

"(3) In applying as the Guam Territorial income tax the income-tax laws in force in Guam pursuant to subsection (a) of this section, the rate of tax under sections 871, 881, 884, 1441, 1442, 1443, 1445, and 1446 of the Internal Revenue Code of 1986 on any item of income from sources within Guam shall be the same as the rate which would apply with respect to such item were Guam treated as part of the United States for purposes of the treaty obligations of the United States. The preceding sentence shall not apply to determine the rate of tax on any item of income received from a Guam payor if, for any taxable year, the taxes of the Guam payor were rebated under Guam law. For purposes of this subsection, the term 'Guam payor' means the person from whom the item of income would be deemed to be received for purposes of claiming treaty benefits were Guam treated as part of the United States.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to amounts paid after the date of the enactment of the Act.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

Calendar No. 437

107TH CONGRESS *2d Session*	SENATE	REPORT 107–172

GUAM WAR CLAIMS REVIEW COMMISSION ACT

JUNE 24, 2002.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 308]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 308) to establish the Guam War Claims Review Commission, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE

The purpose of H.R. 308 is to establish a Federal commission to determine whether there was parity between the war claims paid to residents of Guam compared with those paid to similarly affected United States citizens or nationals in other areas occupied by Japanese military forces during World War II, and to advise Congress whether additional compensation may be necessary.

BACKGROUND AND NEED

On December 8, 1941, military forces of the Empire of Japan invaded Guam and seized control of the island. At the time, Guam was an unincorporated territory of the United States administered by the United States Navy. Its 22,000 residents were United States nationals. The residents of Guam suffered personal injury, forced labor, forced marches, internment, and executions. Yet they remained loyal to the United States and risked their lives to support the allied war effort.

Efforts to compensate the residents of Guam for their suffering began shortly after the end of hostilities. The Guam Meritorious Claims Act of November 15, 1945 authorized the Secretary of the Navy to appoint a claims commission to pay war claims not in excess of $5,000. The commission had to forward claims in excess of $5,000 to Congress, which had to approve them. The Act required

99–010

claims to be filed within one year. The short time frame for filing claims may have prevented deserving claimants from receiving compensation.

In 1947, the Secretary of the Navy sent a commission headed by Ernest M. Hopkins to assess the war claims payment situation on Guam, among other things. The Hopkins commission recommended that new legislation be enacted to provide for the payment of claims up to $10,000, but no action was taken on the commission's recommendations.

The War Claims Act of 1948 provided compensation for "civilian American citizens" captured on Guam or any other territory or possession of the United States attacked or invaded by Japan. It did not, however, provide compensation for the residents of Guam, who were United States nationals, but not "American citizens," prior to 1950. Congress amended the War Claims Act in 1962 to extend compensation to United States nationals for property loss, but specifically excluded claims for property located on the island of Guam.

In view of the patchwork of war claims laws, which provided different treatment for different groups of persons at different times, H.R. 308 is needed to examine whether the relief provided to the residents of Guam was on a par with that provided to similarly affected United States citizens or nationals in other areas occupied by the military forces of the Empire of Japan.

LEGISLATIVE HISTORY

H.R. 308 was introduced by Representative Underwood on January 30, 2001 and referred to the House Committee on Resources. The House of Representatives passed the bill by voice vote on March 13, 2001.

During the 106th Congress, the House of Representatives passed a similar measure, H.R. 755. It was referred to the Committee on Energy and Natural Resources in the Senate. A similar measure, S. 524, which was introduced by Senator Inouye, was referred to the Committee on Judiciary. No further action was taken on either H.R. 755 or S. 524.

The Committee on Energy and Natural Resources held a hearing on H.R. 308 on July 27, 2001. The Committee considered H.R. 308 at its business meeting on June 5, 2002, and ordered the bill favorably reported.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on June 5, 2002, by a voice vote of a quorum present, recommends that the Senate pass H.R. 308 without amendment.

SECTION-BY-SECTION

Section 1 provides a short title.

Section 2 establishes the Guam War Claims Review Commission and provides for the appointment and compensation of its members.

Section 3 authorizes the Commission to appoint an executive director and other employees. In accordance with section 3161 of title

5, United States Code, the executive director and other employees are in the excepted service of the civil service.

Section 4 directs the Secretary of the Interior to provide the Commission with administrative support services on a reimbursable basis.

Section 5 prescribes the duties of the Commission.

Section 6(a) authorizes the Chairman of the Commission to exercise its executive and administrative powers and to delegate such powers to the Commission's staff.

Section 6(b) authorizes the Commission to hold hearings and administer oaths and affirmations.

Section 6(c) authorizes the Commission to procure the temporary and intermittent services of experts and consultants.

Section 6(d) authorizes the head of any Federal department or agency to provide support to the Commission in carrying out its duties.

Section 7 provides that the Commission will terminate 30 days after it submits its report to Congress.

Section 8 authorizes $500,000 to be appropriated to carry out the Act.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 14, 2002.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 308, the Guam War Claims Review Commission Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 308—Guam War Claims Review Commission Act

H.R. 308 would establish the Guam War Claims Review Commission to consider restitution for those individuals who resided on the island of Guam, a territory of the United States, during its occupation by the Japanese in World War II. Under H.R. 308, the five commission members would establish eligibility requirements, determine the number of individuals who meet such requirements, and estimate the total amount that would be necessary to adequately compensate them for damages suffered during Japan's occupation. The commission would have nine months to report its findings to the Congress. To fund the costs of the commission, the act would authorize the appropriation of $500,000.

Assuming appropriation of the authorized amount, CBO estimates that implementing H.R. 308 would cost $500,000 in fiscal year 2003. Because the act would not affect direct spending or receipts, pay-as-you-go procedures would not apply. The act does not authorize the payment of restitution; such authority would require a separate act of the Congress. H.R. 308 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no significant impact on the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 308.

The bill is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals and businesses.

Any additional personal information (other than information already available in existing archives) will be collected on a voluntary basis. Therefore, there should be no adverse impact on personal privacy.

Little, if any additional paperwork would result from the enactment of H.R. 308.

EXECUTIVE COMMUNICATIONS

On July 25, 2001, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on H.R. 308. These reports have not been received at the time the report was filed. The testimony provided by the Department of the Interior at the Committee hearing follows:

STATEMENT OF CHRISTOPHER KEARNEY, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the Committee, it is a pleasure for me to appear before you today to discuss the Administration's views on H.R. 308—the Guam War Claims Review Commission Act.

H.R. 308—GUAM WAR CLAIMS REVIEW COMMISSION ACT

H.R. 308, the Guam War Claims Review Commission Act, would establish a five-member commission to: (1) Examine whether or not Guam War Claims compensation paid to residents of Guam was on parity with compensation provided to United States citizens or nationals in territory occupied by the Imperial Japanese military forces during World War II, (2) advise on additional compensation for the people of Guam, and (3) submit a report, including comments and recommendations, within nine months to the Secretary of the Interior and relevant congressional committees.

Background

Hours after December 7, 1941 attack on Pearl Harbor, the Japanese attacked and captured Guam. The Japanese were in full control of Guam until 1944. The people of Guam suffered during the occupation. Yet, they remained loyal to the United States, often risking their own personal safety to aid the American war effort and American military personnel left on the island.

In recognition of the suffering of these United States nationals, the first war claims act passed by the Congress was for Guam. It was called the Guam Meritorious Claims Act of November 11, 1945. It authorized the formation of a claims commission to make payments not to exceed $5,000 for damage, loss or destruction of public or private property resulting from hostilities or hostile occupation or non-combat activities of United States armed forces or civilian personnel. If a claim exceeded $5,000 or was for death or personal injury, it was to be forwarded to the Congress for payment out of appropriations.

In early 1947, a delegation headed by Ernest M. Hopkins was sent by Secretary of the Navy James V. Forrestal to assess the war claims payment situation on Guam, which was administered at the time by the Navy. The March 25, 1947 Hopkins delegation report stated:

> The Guamanian people rendered heroic service to the Nation in the recent war and displayed great courage, fortitude and loyalty. Such services, equivalent to service on the field of battle, should be recognized both collectively and in specific cases, individually.

The Hopkins delegation called for legislation to pay all claims "on the spot" in Guam, including death and personal injury, and raising the limit to $10,000. The Hopkins authors also recommended further relief for any person who had voluntarily reduced his claim to $5,000. No action was taken on the Hopkins report.

A year later, the Congress passed the War Claims Act of 1948. Among other provisions was one to compensate "civilian American citizens" who were captured at Midway, Guam, Wake Island, the Philippine Islands, or any territory or possession of the United States attacked or invaded by the Imperial Japanese Government. Payments were made to persons who were interned by the Japanese and to widows and children of persons who died in internment. Virtually all the residents of Guam were "nationals" of the United States at that time, but not "citizens." Thus, the 1948 Act did not apply to most World War II residents of Guam.

The 1962 amendment to the War Claims Act of 1948 provided for payments to "nationals of the United States" for loss, destruction, or damage to property "except the Island of Guam." The 1962 amendments did not compensate for death or personal injury, except on the high seas.

What we have here is a patchwork of war claims laws focusing on differing groups of persons at differing times with relief for differing categories of suffering.

Administration position

The Administration supports H.R. 308, with a change that I will address shortly.

We believe that the central reason for this legislation is reflected in item (4) of section 5 of the bill. Item (4) calls for a commission to determine whether or not there was parity of war claims paid to residents of Guam as compared with awards paid to other similarly affected United States citizens or nationals in territory occupied by the Imperial Japanese military forces during World War II. Examination of the history of war claims payments is warranted given questions involving the administration of the Guam Meritorious Claims Act and subsequent claims acts. By examining the payments under the various acts, the commission will be able to determine how claimants on Guam fared vis-a-vis United States citizens and other nationals with regard to different categories of suffering and deprivation for which awards were made.

I would now like to turn to item (5) of section 5, the one key area of concern we have with the bill. The term "people of Guam" and the listing of categories in item (5) would introduce new language not included in existing World War II war claims acts. Moreover, item (5) is redundant of item (6), which directs the commission to issue a report, "including any comments and recommendations for action." If the commission believes that "additional compensation" should be paid, based on analysis of the World War II war claims laws and information from Guam, it can include such a recommendation in its report. The Administration, therefore, suggests that item (5) of section 5 of H.R. 308 be removed from the bill.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by H.R. 308 as ordered reported.

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107TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
107–48

GUAM FOREIGN INVESTMENT EQUITY ACT

APRIL 24, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HANSEN, from the Committee on Resources,
submitted the following

REPORT

[To accompany H.R. 309]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 309) to provide for the determination of withholding tax rates under the Guam income tax, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 309 is to provide for the determination of withholding tax rates under the Guam income tax.

BACKGROUND AND NEED FOR LEGISLATION

Under the U.S. Internal Revenue Code, there is a standard 30% State income tax rate for foreign investors in the United States. Since Guam's territorial tax law mirrors the rate established under the U.S. Code, the territorial income tax rate for foreign investors in Guam is 30%.

It is a common feature of tax treaties negotiated by the U.S. to provide for lower tax rates on investment income for the other countries' investors. Unfortunately, Guam is not included in any of these treaty definitions as being part of the "United States." Such omissions have adversely impacted Guam since 75% of Guam's commercial development is funded by foreign investors. As an example, under a treaty with Japan, the rate at which states may tax Japanese investors is 10%. That means while a Japanese investor's income would be taxed at a rate of 10% in any of the fifty states, that same investor's income would be taxed at a rate of 30% in Guam.

In the 106th Congress, the House passed almost identical language to H.R. 309 in Section 3 of the Guam Omnibus Opportunities Act (H.R. 2462). However, while under consideration by the Senate, the Treasury Department raised concerns that the provision would allow foreign investors who benefit from Section 3 to simultaneously benefit from other tax rebates under Guam territorial law. H.R. 309 reflects language which addresses this concern.

H.R. 309 amends the Organic Act of Guam to provide the government of Guam with the authority to tax foreign investors at the same rates as states under U.S. tax treaties with foreign nations since Guam cannot change the withholding tax rate on its own under current law. The Committee finds that the imposition of the withholding tax of 30% on foreign investors reflected in the U.S. "mirror- image" tax system of the government of Guam hampers the island's ability to expand its economy. The Committee notes that if U.S. treaties included U.S. insular areas in defining the United States in future negotiated treaties then Guam would be able to benefit from other economic opportunities afforded to the 50 states.

COMMITTEE ACTION

H.R. 309 was introduced on January 30, 2001, by Congressman Robert A. Underwood (D-GU). The bill was referred to the Committee on Resources. On March 28, 2001, the Full Resources Committee met to consider the bill. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and Article IV, section 3 of the Constitution of the United States grant Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of Rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 30, 2001.

Hon. JAMES V. HANSEN,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 309, the Guam Foreign Investment Equity Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBS staff contacts are John R. Righter (for federal costs) and Marjorie Miller (for the state and local impact).

Sincerely,

BARRY B. ANDERSON
(For Dan. Crippen, Director).

Enclosure.

H.R. 309—Guam Foreign Investment Equity Act

H.R. 309 would amend the Organic Act of Guam to require the government of Guam to tax the earnings of foreign investors at the same rates as those applied by the 50 states under U.S. tax treaties with foreign countries. Because the bill would not affect federal tax rates, CBO estimates that implementing H.R. 309 would have no impact on the federal budget. Because the bill would not affect direct spending or governmental receipts, pay-as-you-go procedures would not apply.

H.R. 309 contains no private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act. The bill would change the tax rate applied to income earned by foreign (i.e., non-U.S. and non-Guamanian) investors under the Guam territorial income tax. This change would allow income earned in Guam by foreign investors to be taxed at the same rates as would apply to such income earned in the 50 states—rates established by tax treaties with foreign countries. In the short term, this change would result in decreased revenues from the Guam territorial income tax. In the long term, however, those losses could be offset to the extent that increased foreign investment in the territory generates increased tax revenues.

Enactment of this legislation would have no significant impact on the budgets of other state, local, or tribal governments.

The CBO staff contacts are John R. Righter (for federal costs) and Majorie Miller (for the state and local impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

COMMITTEE CORRESPONDENCE

AGANA, GUAM, *April 4, 2001.*

Hon. JAMES V. HANSEN,
Chairman, Committee on Resources,
Washington, DC.

DEAR CHAIRMAN HANSEN: I am writing in support of H.R. 309, the Guam Foreign Investment Equity Act, which is scheduled for committee markup on March 28 in the Committee on Resources. This bill is supported by the Guam Chamber of Commerce and it is a priority of my administration for Guam's economic recovery.

The Guam Foreign Investment Equity Act would remove a disparity that now exists wherein foreign investors may receive more favorable tax treatment by investing in all fifty states and all the other U.S. territories. Guam alone is unable to offer the same tax withholding benefits that every state and territory are afforded when a tax treaty is implemented between the United States and a foreign government. H.R. 309 would amend the Organic Act of Guam to establish lower withholding tax rates for foreign investors on Guam so that this disparity is eliminated. We would no longer be at a disadvantage in attracting foreign investments to our island and we hope to be able to increase the investments in our tourism infrastructure in the years to come to create new jobs.

With our current unemployment rate of 15% and a slowly recovering economy (Guam is literally in Asia), H.R. 309 would be a new tax incentive that we hope will result in new interest in Guam. We had worked with Congressman Underwood and the previous administration to craft the compromise language that is incorporated in H.R. 309, and we support the bill as it is now written. Thank you for placing H.R. 309 on the markup calendar for March 28. I hope that the Committee on Resources will recommend H.R. 309 to the House for passage on the floor.

Sincerely,

CARL T.C. GUTIERREZ,
Governor of Guam.

GUAM CHAMBER OF COMMERCE,
Guam, March 23, 2001.

Hon. JAMES V. HANSEN,
Chairman, Committee on Resources, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Guam Chamber of Commerce is seeking your vote in support of enactment of the Guam Foreign Investment Equity Act, H.R. 309, introduced by our Washington Delegate, Congressman Robert A. Underwood.

The Guam Foreign Investment Equity Act will provide Americans in Guam with the same tax advantages long enjoyed by other

Americans in our United States. It is also essential to the recovery of our island economy.

The weakened Asian economies continue to weigh on Guam's tourism industry, as prospective projects have become too marginal given the effect withholding taxes have on projected returns. Consequently, many long established businesses in Guam owned by foreign investors have closed or will be closing soon. Investment capital from Asian countries have funded more than three-fourths of the commercial development on our island. Your vote for enactment of the Guam Foreign Investment Equity Act will be responsible to our need for immediate relief for it will address our major problem of an extremely high rate of withholding tax on diminishing profits as well as debt repayment.

We are America in Asia, the closest U.S. destination to America's major trading partners in Asia, key markets for Guam's tourism industry, our largest industry. H.R. 309 is critical to Guam's future development for it will expand our financial relationship with countries supportive of development opportunities on our island.

The Guam Chamber of Commerce has served the Guam community for 77 years. Our membership manages sales volumes in excess of $2 billion that equates to 70% of Guam's Gross Island Product. We represent all sectors of Guam's business community, with small micro-businesses as our largest component totaling 48% of member companies. We are a member of the U.S. Chamber of Commerce and the Asia-Pacific Council of American Chambers of Commerce.

A resolution adopted by the Board of directors stating our full support of the Guam Foreign Investment Equity Act is enclosed for your consideration.

Sincerely,

THOMAS P. MICHELS,
Chairman of the Board.
ELOISE R. BAZA,
President.

Enclosure.

RESOLUTION ON THE GUAM FOREIGN INVESTMENT EQUITY ACT ADOPTED BY THE BOARD OF DIRECTORS, GUAM CHAMBER OF COMMERCE

Whereas, since the inception of civil government in 1950 the people of Guam has struggled with the "mirror image" application of the Internal Revenue Code of the United States; and

Whereas, a significant barrier to foreign investment in Guam is the statutory 30% withholding tax rate on dividends, interest and other forms of passive income remitted to foreign investors from their investment projects in Guam, a rate which Guam has no authority to change; and

Whereas, Guam is at a serious disadvantage to other jurisdictions in the United States in attracting foreign investment because tax treaties between the United States and foreign nations intended to balance the effective corporate tax rates between trading countries, do not apply to Guam; Now therefore be it

Resolved, the Guam Chamber of Commerce recommends as essential to Guam's developing island economy, legislation permitting

Guam to apply the same withholding tax rates as if Guam were treated as part of the United States for purposes of the treaty obligations of the United States as proposed in the Guam Foreign Investment Equity Act; and be it further

Resolved, that the Guam Chamber of Commerce strongly endorses the enactment of the Guam Foreign Investment Equity Act introduced on January 30, 2001 as H.R. 309 by Delegate Robert A. Underwood (Guam).

Adopted by the Board of Directors on the 23rd day of March, 2001.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 31 OF THE ORGANIC ACT OF GUAM

SEC. 31. (a) The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam: *Provided,* That notwithstanding any other provision of law, the Legislature of Guam may levy a separate tax on all taxpayers in an amount not to exceed 10 per centum of their annual income tax obligation to the Government of Guam.

* * * * * * *

(d)(1) * * *

* * * * * * *

(3) In applying as the Guam Territorial income tax the income-tax laws in force in Guam pursuant to subsection (a) of this section, the rate of tax under sections 871, 881, 884, 1441, 1442, 1443, 1445, and 1446 of the Internal Revenue Code of 1986 on any item of income from sources within Guam shall be the same as the rate which would apply with respect to such item were Guam treated as part of the United States for purposes of the treaty obligations of the United States. The preceding sentence shall not apply to determine the rate of tax on any item of income received from a Guam payor if, for any taxable year, the taxes of the Guam payor were rebated under Guam law. For purposes of this subsection, the term "Guam payor" means the person from whom the item of income would be deemed to be received for purposes of claiming treaty benefits were Guam treated as part of the United States.

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SS/ RM NO. 518664

WHITE HOUSE STAFFING MEMORANDUM

'02 AUG 15 PM 4:12

Date: 8-15-02, 11:00 PM ACTION / CONCURRENCE / COMMENT DUE BY: 8-16-02, 5:00 PM

Subject: ENROLLED BILL H.R. 309, GUAM FOREIGN INVESTMENT EQUITY ACT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☐	☐
CARD	☑	☐	IRASTORZA	☐	☐
BARTLETT	☑	☐	JOHNSON	☐	☐
BLAKEMAN	☐	☐	LINDSEY	☐	☐
BOLTEN	☑	☐	MARBURGER	☐	☐
BRIDGELAND	☐	☐	MIERS	☐	☑
CALIO	☑	☐	RICE	☐	☐
CONNAUGHTON	☑	☐	RIDGE	☐	☐
DANIELS	☐	☑	ROVE	☑	☐
FLEISCHER	☐	☐	SPELLINGS	☑	☐
GERSON	☐	☐	CLERK	☐	☑
GONZALES	☑	☐	____________	☐	☐
HAGIN	☐	☐	____________	☐	☐
HAWKINS	☐	☐	____________	☐	☐

REMARKS:
PLEASE SEND COMMENTS TO JOHN BURNIM, EXT. 57302, FAX 55691, NO LATER THAN 5:00 PM FRIDAY, 8-16-02, WITH COPY TO STAFF SECRETARY. THANK YOU.

OK

RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

August 15, 2002

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 309 - Guam Foreign Investment Equity Act
Sponsor - Del. Underwood (D) Guam

Last Day for Action

August 24, 2002 - Saturday

Purpose

Requires the government of Guam to tax foreign investors at the same reduced Federal income tax rates which they are subject to in the 50 States under tax treaties between the United States and foreign nations.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Department of the Treasury	Approval
Department of Justice	No objection (Informally)
Department of State	No objection (Informally)
Department of Labor	No comment (Informally)

Discussion

Guam is an unincorporated territory of the United States, and its residents are citizens of the United States. Guam is governed by an organic act approved by Congress. The Organic Act of Guam applies the income tax laws in force in the United States to Guam in the form of a Guam territorial income tax. The Federal Internal Revenue Code generally levies a tax on non-resident aliens in the amount of 30 percent of the gross amount of interest, dividend, rent, royalty and other periodic income derived from their investments in the United States. Since the Guam territorial income tax is required to mirror the Federal Internal Revenue Code, Guam taxes foreign investors at the 30 percent rate.

The United States has entered into bilateral tax treaties with over 60 nations which lower the tax rate for investors from any nation that has entered into such a treaty. According to the report of the Senate Energy and Natural Resources Committee on H.R. 309, the treaties typically lower the tax rate from 30 percent to between 5 and 15 percent. However, Guam is not considered part of the United States for purposes of any of those treaties, and, as a result, the income on foreign investment continues to be taxed at the 30 percent rate in Guam.

H.R. 309 would lower the tax rate on foreign investment in Guam by amending the Organic Act of Guam to require the government of Guam to apply to the earnings of foreign (i.e. non-U.S. and non-Guamanian) investors the tax rates that would apply "were Guam treated as part of the United States for purposes of the treaty obligations of the United States," i.e., the same rates as those applied for Federal income tax purposes in the 50 States under U.S. tax treaties with foreign countries.

The enrolled bill would prohibit Guam from applying the lower treaty tax rates to foreign investors that invest in Guam entities that have received tax rebates in any given taxable year under Guam law. The Department of the Treasury advises that this provision "prevents the inappropriate use of Guam entities to avoid taxation."

<u>Conclusions and Recommendations</u>

The Department of the Interior recommends approval of H.R. 309. In its views letter, the Department notes that the current disparity between tax rates imposed by Guam and the United States on foreign investments "has proven to be a disincentive for investment in Guam by foreign investors." The Department states that "H.R. 309 would level the playing field for Guam, and bolster its economy."

We join the Departments of the Interior and the Treasury in recommending approval of H.R. 309, which passed the House by voice vote and the Senate by unanimous consent.

M E Daniels Jr

Mitchell E. Daniels, Jr.
Director

Enclosures

SS/ RM NO. 518664

WHITE HOUSE STAFFING MEMORANDUM

Date: 8-15-02, 11:00 PM ACTION / CONCURRENCE / COMMENT DUE BY: 8-16-02, 5:00 PM

Subject: ENROLLED BILL H.R. 309, GUAM FOREIGN INVESTMENT EQUITY ACT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☐	☐
CARD	☑	☐	IRASTORZA	☐	☐
BARTLETT	☑	☐	JOHNSON	☐	☐
BLAKEMAN	☐	☐	LINDSEY	☐	☐
BOLTEN	☑	☐	MARBURGER	☐	☐
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CALIO	☑	☐	RICE	☐	☐
CONNAUGHTON	☑	☐	RIDGE	☐	☐
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GERSON	☐	☐	CLERK	☐	☑
GONZALES	☑	☐		☐	☐
HAGIN	☐	☐		☐	☐
HAWKINS	☐	☐		☐	☐

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no comment

RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

August 15, 2002

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 309 - Guam Foreign Investment Equity Act
Sponsor - Del. Underwood (D) Guam

Last Day for Action

August 24, 2002 - Saturday

Purpose

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Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Department of the Treasury	Approval
Department of Justice	No objection (Informally)
Department of State	No objection (Informally)
Department of Labor	No comment (Informally)

Discussion

Guam is an unincorporated territory of the United States, and its residents are citizens of the United States. Guam is governed by an organic act approved by Congress. The Organic Act of Guam applies the income tax laws in force in the United States to Guam in the form of a Guam territorial income tax. The Federal Internal Revenue Code generally levies a tax on non-resident aliens in the amount of 30 percent of the gross amount of interest, dividend, rent, royalty and other periodic income derived from their investments in the United States. Since the Guam territorial income tax is required to mirror the Federal Internal Revenue Code, Guam taxes foreign investors at the 30 percent rate.

The United States has entered into bilateral tax treaties with over 60 nations which lower the tax rate for investors from any nation that has entered into such a treaty. According to the report of the Senate Energy and Natural Resources Committee on H.R. 309, the treaties typically lower the tax rate from 30 percent to between 5 and 15 percent. However, Guam is not considered part of the United States for purposes of any of those treaties, and, as a result, the income on foreign investment continues to be taxed at the 30 percent rate in Guam.

H.R. 309 would lower the tax rate on foreign investment in Guam by amending the Organic Act of Guam to require the government of Guam to apply to the earnings of foreign (i.e. non-U.S. and non-Guamanian) investors the tax rates that would apply "were Guam treated as part of the United States for purposes of the treaty obligations of the United States," i.e., the same rates as those applied for Federal income tax purposes in the 50 States under U.S. tax treaties with foreign countries.

The enrolled bill would prohibit Guam from applying the lower treaty tax rates to foreign investors that invest in Guam entities that have received tax rebates in any given taxable year under Guam law. The Department of the Treasury advises that this provision "prevents the inappropriate use of Guam entities to avoid taxation."

Conclusions and Recommendations

The Department of the Interior recommends approval of H.R. 309. In its views letter, the Department notes that the current disparity between tax rates imposed by Guam and the United States on foreign investments "has proven to be a disincentive for investment in Guam by foreign investors." The Department states that "H.R. 309 would level the playing field for Guam, and bolster its economy."

We join the Departments of the Interior and the Treasury in recommending approval of H.R. 309, which passed the House by voice vote and the Senate by unanimous consent.

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Mitchell E. Daniels, Jr.
Director

Enclosures

SS/ RM NO. 518664

WHITE HOUSE STAFFING MEMORANDUM

'02 AUG 16 PM4:52

Date: 8-15-02, 11:00 PM ACTION / CONCURRENCE / COMMENT DUE BY: 8-16-02, 5:00 PM

Subject: ENROLLED BILL H.R. 309, GUAM FOREIGN INVESTMENT EQUITY ACT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☐	☐
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GONZALES	☑	☐	____________	☐	☐
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HAWKINS	☐	☐	____________	☐	☐

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RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

'02 AUG 15 PM 4:57

THE DIRECTOR

August 15, 2002

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Conclusions and Recommendations

The Department of the Interior recommends approval of H.R. 309. In its views letter, the Department notes that the current disparity between tax rates imposed by Guam and the United States on foreign investments "has proven to be a disincentive for investment in Guam by foreign investors." The Department states that "H.R. 309 would level the playing field for Guam, and bolster its economy."

We join the Departments of the Interior and the Treasury in recommending approval of H.R. 309, which passed the House by voice vote and the Senate by unanimous consent.

M E Daniels

Mitchell E. Daniels, Jr.
Director

Enclosures